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# Turning the Tide: Big Pharma Willing to Settle

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Turning the Tide: Big Pharma Willing to Settle

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The opioid epidemic has claimed 47,600 lives in 2017 alone. In 2016 and 2017 more than 130 people every day died due to opioid use.[1] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn1) The hardest hit areas include: West Virginia, Ohio, Kentucky, Pennsylvania, and the District of Colombia.[2] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn2)

The crisis began in Maine and worked its way down the Appalachian Mountains, devastating parts of rural Appalachia. Purdue Pharma, the manufacturer of OxyContin, developed the drug in 1995.[3] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn3) After obtaining FDA approval, the drug hit the market in 1996. [4] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn4) Five years later officials began to inquire about how addictive the medication was, yet the company managed to convince the government that it was not more addictive than other drugs on the market. [5] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn5) However, in 2007, Purdue admitted it "deceptively marketed and promoted OxyContin as less addictive, less subject to abuse, and less likely to tolerance and withdrawal than other medications." [6] (applewebdata://5C9B9657-74DC-43F7-971A-

2814C8B26CD8#\_edn6) Purdue hid this evidence. A unanimous decision by a three-judge panel in the Kentucky Court of Appeals on

(applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn7) On August 26, 2019, the Kentucky Supreme Court denied to review this decision, clearing the way for these records to be obtained.[8] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn8)

The introduction of opioids greatly altered the healthcare system, creating the fifth vital sign. The fifth vital sign invites providers to ask patients “What is your pain level today?” during each office visit.[9] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn9) By custom, a pain level of 7 or more meant that the patient left the office with an opioid prescription.[10] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn10)

While public health and legislative efforts have begun to limit the amount of opioids distributed legally, there still exists many illegal efforts to provide pills to those most vulnerable through cash based pill mills. For example, one recent case involved the Tennessee Pain Clinic located outside of Chattanooga, TN.[11] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn11) This was no pain clinic, but rather, a front for a pill mill. Federal District Court Judge Wier sentenced a physician involved in the operation to twenty-one years.[12] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn12) Over half of this clinic’s customers were from Kentucky.[13] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn13) Individuals paid cash, as insurance was not accepted, and individuals transported these medications back into Kentucky to supply local drug dealers.[14] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn14) In total, this operation distributed 1.6 million Oxycodone pills to the region.[15] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn15) Black market operations such as this are the main driver of the opioid crisis as victims become increasingly desperate for a fix. The disaster has been exacerbated by many individuals who have turned to heroine in hopes of finding a cheaper way to get high.[16] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn16) Unfortunately, it is hard to know the exact ingredients of the illicit substances.[17] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn17) Many doses of heroine are laced with fentanyl, which is much more deadly than heroin.[18] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn18) To put it in perspective, it takes 0.25 milligrams of fentanyl to cause a fatal overdose because it is 50-100 times more potent than morphine.[19] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn19)

It is no surprise that over 2,000 counties, cities, and Native American tribes have filed suit against pharmaceutical companies that make and produce opioids.[20] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn20) Suits have also targeted Prescription Benefit Managers (PBMs) and insurance companies in order to obtain the maximum relief for victims and their families.[21] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn21) These numerous suits have been consolidated into one scheduled for October 21, 2019 before Judge Polster in Federal District Court in Cleveland, Ohio.

Judge Polster recently ruled against the drug industry on numerous pre-trial motions. These preliminary rulings have begun a chain reaction on the part of the drug manufactures who opt to settle with plaintiffs in order to be removed from the case and avoid the risk of a court ordered judgment. For example, Mallinckrodt, an Irish company, agreed to settle with two counties in Ohio for \$30 million. A DEA report showed that a Mallinckrodt subsidiary, called SpecGX, was the single largest manufacturer of the more than 76 billion opioids distributed across the United States between 2006 and 2012.[22] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn22) Additionally, Purdue Pharma is also in settlement negotiations for their role in the opioid crisis. [23] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn23) As a part of an approximate \$10 billion settlement, Purdue Pharma filed Chapter 11 bankruptcy on Sunday, September 15, 2019 and the Sackler Family (owners of Purdue) announced their intentions to give up the company which is a part of an approximate \$10 billion settlement arrangement. [24] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn24)

This willingness to settle comes on the heels of an Oklahoma decision on August 26, 2019, where a judge ordered Johnson & Johnson (“J&J”) to pay \$572 million for its role in the opioid crisis. The court found that J&J had “engaged in false, deceptive, and misleading marketing” which constituted a public nuisance for adding to the opioid epidemic. Damages were calculated by assessing the predicted dollar amount that would be needed each year to remedy this crisis.

However, there is a scary realization that many of the victims of this crisis will never see a penny of that relief or future relief. Legal scholars equate opioid settlements to the Master Settlement Agreement with the tobacco industry.[25] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn25) That settlement is the result of the largest piece of civil litigation in American history, where the state Attorney Generals of forty-six states, the District of Columbia, and five U.S. territories settled with the five largest cigarette manufacturers regarding advertising, marketing,

and promotion of cigarettes. The tobacco industry agreed to pay these states billions of dollars annually, yet today, while 16 million Americans suffer from a smoking related illness, less than 3% of the settlement received is spent on smoking cessation efforts, disease prevention, or providing healthcare

for the victims.[26] (applewebdata://5C9B9657-74DC-43F7-971A-2814C8B26CD8#\_edn26)

Is that the fate of the victims of the opioid crisis or will settlement funds be used to create needle exchanges and erect addiction treatment facilities to stop a generation of Americans from premature death?

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